

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B05

PLR-125242-19

Date: February 6, 2020

LEGEND

Taxpayer =

S1 =

S2 =

P1 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Date 2 =

Date 3 =

\$X =

\$Y =

Dear _____ :

This is in reply to the letter submitted by your authorized representative requesting a ruling on your behalf under § 453(d)(3) of the Internal Revenue Code and § 15a,453-1(d)(4) of the Temporary Income Tax Regulations to revoke an election out of the installment method.

FACTS

Taxpayer, an S corporation owned by S1 and S2, provides services to residential and commercial customers. Taxpayer also leases residential property.

On Date 1, Year 1 Taxpayer sold a majority of its operating assets that were used in the services division for \$X. Under the agreement of sale the purchaser was obligated to pay a stipulated sum at settlement and the remainder of the purchase price, \$Y, is payable in monthly installments beginning two years after the date of sale, amortized over ten years and subject to 6% per annum. The purchaser was not related to Taxpayer.

Taxpayer filed a return for Year 1 on or about Date 2, Year 2 and reported the full amount of gain in connection with the sale of the operating assets. The letter sent on your behalf also states “The taxpayer did not realize that the entire sale was reported as a lump sum sale on the tax return filed and prepared by a preparer. The preparer did not explain the tax treatment of the sale to the taxpayer. The taxpayer filed the return timely and paid all the tax due with the return.” The Taxpayer’s request to revoke the election out of the installment method was received by this office on Date 3, Year 4.

P1, the preparer, furnished an affidavit indicating that when the original Year 1 return was prepared, consideration of the installment method was inadvertently overlooked. S1, a shareholder and President of Taxpayer, also provided an affidavit stating that when the Taxpayer’s return was filed he did not understand the tax law, including availability of the installment sale method for reporting gain associated with sales proceeds that will be received over several years. S1’s affidavit further indicates that he retained a different return preparer to review the original return and that the lapse of time between the filing of the original return for Year 1 and submission of this ruling request is attributable to a “busy filing season” and the time necessary for the new preparer to complete the letter ruling request and submit it with the user fee.

LAW AND ANALYSIS

Section 453(a) provides, generally, that a taxpayer shall report income from an installment sale under the installment method. An installment sale “. . . means a disposition of property where at least 1 payment is to be received after the close of the taxable year in which the disposition occurs.” I.R.C. § 453(b)(1).

Section 453(d)(1) provides, however, that the installment sale method will not apply to a disposition of property if the taxpayer elects not to have the installment method apply to such disposition. Under § 453(d)(2), except as otherwise provided by regulations, an election out of the installment method respecting a disposition may be made only on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of tax for the taxable year in which the disposition occurs. A taxpayer who reports an amount realized equal to the selling price, including the full face amount of an installment obligation, on a timely filed return for the taxable year in which the sale occurred is considered to have elected out of the installment method. Temp. Treas. Reg. § 15a.453-1(d)(3).

An election not to report under the installment method is generally irrevocable, except that such election may be revoked with the consent of the Internal Revenue Service (IRS). Temp. Treas. Reg. § 15a.453-1(d)(4). A revocation of an election out of the installment method will not be permitted if a purpose is the avoidance of federal income tax, or when the taxable year when a payment was received is closed. *Id.*

In this case the preparer of the Taxpayer's Year 1 return did not explain to Taxpayer the tax treatment of the sale of the operating assets and that the Code allows for the payment of federal income tax on the transaction over time using the installment method. The Taxpayer did not realize that the Year 1 return reported the "... entire sale as a lump sum sale ..." Taxpayer's representative filed a request for the IRS's consent to revoke the election out of the installment method. All taxable years in which payments were received are open and the request to revoke the election does not have a purpose of avoiding federal income tax.

CONCLUSION

Based on the information submitted and representations made, Taxpayer is granted permission to revoke the election out of the installment method for Year 1. Taxpayer must file an amended federal income tax return for Year 1 to report the gain except for the portion of the purchase price payable in monthly installments beginning two years after Date 1, Year 1. Taxpayer must also file an amended tax return for Year 3 and include the portion of the gain attributable to the monthly installments received in such year. A copy of this letter ruling must be attached to any amended return.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the consequences of any aspect of any transaction or item discussed or referenced in this letter, including the computation of gain to be reported under the installment method. Likewise, no opinion is expressed or implied concerning the tax consequences of any aspect of either shareholder's return for any year.

This ruling is directed only to Taxpayer, who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer's representative, S1, P1 and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Sincerely,

William A. Jackson
Branch Chief, Branch 5
(Income Tax & Accounting)

cc: